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10 MAR 2008

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Law Offices of Karl Hornmann
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Cambridge, MA 02138

In re Application of
MOCK, et al.
Application No.: 10/520,437
PCT No.: PCT/DE03/02401
Int. Filing Date: 13 July 2003
Priority Date: 14 July 2002
Attorney Docket No.: 030666-US
For: NUCLEIC ACID SEQUENCE CODING FOR
ENZYME DELTA-12-DESATURASE AND
ORINATING FROM FIGILARIOPSIS...

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's "Response to Telephone Request and Petition Under 37 CFR 1.8(b)" filed 27 August 2007 in the United States Patent and Trademark Office (USPTO). For the reasons discussed below, the filing is being treated as a petition under 37 CFR 1.181. No petition fee is required. A review of the fee records for the present application finds that the \$100.00 petition fee paid on 27 August 2007 was refunded on 08 February 2008.

BACKGROUND

On 13 July 2003, applicant filed international application PCT/DE03/02401, which claimed priority of an earlier application filed 14 July 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 13 February 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 14 January 2005.

On 06 January 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application; an unsigned declaration and a preliminary amendment.

On 27 February 2006, applicant was mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) indicating that an executed oath or declaration of the inventors was required, as well as, payment of the surcharge for providing an executed oath or declaration later than thirty months from the earliest claimed priority date. In addition, applicant was informed of the need to file a proper sequence listing. Applicant was afforded two months to file a proper response.

On 22 March 2006, applicant responded with an executed combined declaration and power of attorney, as well as, payment of the appropriate surcharge. However, a compliant

sequence listing in computer readable form was not filed.

On 05 July 2006, applicant was mailed a "Notification of Defective Response" (Form PCT/DO/EO/916) indicating that applicant was afforded one month to file a complete response.

On 27 August 2007, applicant filed the response discussed herein arguing that a response to the Form PCT/DO/EO/916 had been filed on 12 July 2006.

On 08 February 2008, applicant was mailed an additional Form PCT/DO/EO/916 indicating receipt of applicant's response of 27 August 2007. The notice mistakenly lists the receipt date as 27 August 2006. The notice indicates that a proper response has yet to be filed and affords applicant one month to comply.

DISCUSSION

Applicant's response of 27 August 2007 is considered timely filed and the petition fee refunded. Specifically, pursuant to 37 CFR 1.8(b), applicant has informed the office of the prior filing, supplied a firsthand statement from counsel attesting to its deposit with the United States Postal Service and supplied an additional copy of the filing. A review of the previously filed transmittal letter shows proper certification under 37 CFR 1.8. As such, it is proper to grant applicant's petition to consider the 27 August 2007 copy of the filing as a timely response to the Form PCT/DO/EO/917 mailed 05 July 2006.

CONCLUSION

For the reasons above, applicant's petition under 37 CFR 1.181 is **GRANTED**.

This application is being returned to the PCT Operations, National Stage Processing Branch to await a response to the Form PCT/DO/EO/916 mailed 08 February 2008.



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